

On July 5th, 2011 the FCC released its 15th Annual Wireless Competition Report (<http://www.fcc.gov/reports/15th-annual-mobile-wireless-competition-report>). Before discussing the findings, let's look back over the policy changes the FCC has made over the past year.

The FCC certainly wasn't shy about imposing new rules. In early April, the Commission created rules that force mobile operators to offer their data networks to smaller carriers on "commercially reasonable terms and conditions." A previous mandate forcing wireless providers to allow other companies to use their infrastructure covered only voice signals. The new proposal applies the same rules to signals allowing mobile access to the Internet, email, etc. The regulations force big providers like Verizon to essentially subsidize the infrastructure investments for smaller ones. American Consumer Institute's own President Steve Pociask noted:

"When private companies compete for market share, consumers always win; but when regulations and legislation help advantage competitors, consumers invariably lose."

And now, for the past several months, nearly every interest group—from Americans for Tax Reform to the National Educators Association—has been lining up to take sides on the proposed AT&T/T-Mobile merger. With few clues to go on from last year's Competition Report, the assumption has been that many of the answers to the merger saga would be found in this year's report. But, it looks like the FCC has decided to punt once again.

The answers to the question of wireless competition had the clarity and concision that only a government agency could have. The Wall Street Journal found this gem:

The agency said that it found that "the mobile wireless ecosystem is sufficiently complex and multi-faceted that it would not be meaningful to try to make a single, all inclusive finding regarding effective competition that adequately encompasses the level of competition in the various interrelated segments, types of services, and vast geographic areas of the mobile wireless industry."

And those looking for specific answers to the AT&T merger found this:

?A merger can potentially form a stronger provider that restrains competitors from engaging in anticompetitive behavior, or may increase the likelihood that the merged firm may itself, or in coordination with other firms, would obtain or maintain market power.?

Ambiguity wasn't the only problem with the new report. The authors failed to understand the evolving markets of the wireless industry. Verizon representatives saw a fundamental flaw in the analysis: The FCC acknowledged only the handful of nationwide mobile phone providers as competitors in the marketplace, but failed to make mention of the hundred of regional and local providers.

In a press statement about the report, Verizon's senior vice president of federal regulatory relations, Kathleen Grillo said:

?Today wireless competition comes from cable companies; Wi-Fi and satellite service providers; handset, tablet and laptop manufacturers; operating system and application designers, and many others.? She furthered, ?All these players both compete against each other and partner, driving innovation and giving consumers more choices and lower prices in the wireless market.?

Undoubtedly, the market is making amazing gains through competition and innovation. Handsets are made with amazing advancements; Google, Microsoft and Apple are pushing each other to expand the limits of mobile operating systems; non-traditional service providers are entering the mobile market; and prices for service and hardware are dropping. With all of this in mind, it's hard to believe the FCC can't bring itself to release a document with any definitive or useful analysis about the market. My concern is that the reluctance to acknowledge market successes might be laying the groundwork for a greater regulatory role.

After pointing out that the U.S. wireless market is far and away the most competitive in the world, AT&T's Robert Quinn, senior vice president of federal regulatory worried that:

?Because the FCC?s decision is a dramatic break from years of solid precedent, we can?t help but worry that this seems intended to justify more regulation in a market where it is clear beyond doubt that regulation is simply unwarranted.?

One of the reports we found particularly interesting was the apparent contradiction the report makes about ?open systems.? In one passage, the report states that:

Google?s Android operating system is made available free of charge to handset manufacturers and wireless service providers, and is available on multiple devices and multiple service providers. As a result, many service providers and device manufacturers have designed customized versions of the Android platform for their products. Some commentators have noted that, because of this, it is difficult for third-party application developers to design and test products for use on a fragmented platform that can vary by device and network.

In the very next passage, the report says:

In December 2010, the Commission adopted rules on Internet openness. The rules require all broadband providers to publicly disclose network management practices, restrict broadband providers from blocking Internet content and applications, and bar fixed broadband providers from engaging in unreasonable discrimination in transmitting lawful network traffic.

If open systems make it ?difficult for third-party application developers? to compete, then why would an open system make it easier for Internet providers to compete? This seems to be a glaring contradiction, and one wonders why they would put it in their report. Could this mean that the FCC might consider setting standards for mobile operating systems? Or, because of the relationship Google has with the Obama administration, does this mean that the FCC will take a ?good enough for thee, but not for me? approach?

Stacey Higginbotham at Gigom offered the perfect analysis of the report:

Sometimes it's not what you say but what you don't say that matters, and in today's release of its annual wireless competition report, the silence of the Federal Communications Commission speaks volumes. The problem is, no one knows what that silence is saying.